

§ 205.3

32 CFR Ch. I (7–1–04 Edition)

§ 205.3 Definitions.

(a) *End Use Certificate (EUC)*. For the purposes of this part, a written agreement in connection with the transfer of military equipment or technical data to the United States that restricts the use or transfer of that item by the United States.

(b) *Use for defense purposes*. Includes direct use by or for the U.S. Government in any part of the world and transfer by means of grant aid, International Military Education and Training (IMET) programs, Foreign Military Sales (FMS), and other security assistance and armaments cooperation authorities.

§ 205.4 Background and policy.

This part is intended to authorize the execution of EUCs when such a certificate is necessary to facilitate purchases of foreign products when the purchase of such products is in the best interest of the United States.

(a) The Military Departments and other DoD Components purchase products produced by allies and friendly countries and participate in cooperative development programs to promote interoperability, standardization, and an expanded procurement base, and to obtain products that best meet U.S. needs at the lowest cost.

(b) U.S. worldwide security responsibilities are extensive and recognition of these special circumstances has resulted in long-time acceptance in international agreements, by allies and friends, of the need for flexibility in the authorized uses or transfer of purchased or co-developed articles and data. In various circumstances, international agreements have recognized that permissible use of an item or data for U.S. “defense purposes” as defined in § 205.3(b).

(c) Consistent with paragraphs (a) and (b) of this section, DoD Components may sign EUCs, in accordance with the policy and procedures outlined below. While most EUCs requested by foreign governments use general language, their effects may be divided into three categories, as described in the following paragraphs. Authority to approve their execution is limited as follows:

(1) Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize EUCs:

(i) For acquisition of items classified for security purposes by a foreign government.

(ii) For the acquisition of items covered by the nonproliferation agreements to which the United States is a party, such as missile technology, or

(iii) That permit the item to be “used for defense purposes” as defined in § 205.3(b), by the United States.

(2) Category II. EUCs that are not Category I or III are Category II. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category II EUCs only after a determination is made through the coordination procedures set forth in § 205.6(a)(1) that, notwithstanding the use or transfer limitations, the purchase is in the U.S. national interest. The least restrictive provisions possible should be negotiated.

(3) Category III. Secretaries of Military Departments and Directors of Defense Agencies may not authorize the signature of EUCs which limit the right:

(i) For use by or for the U.S. Government in any part of the world, or

(ii) To provide the item to allies engaged together with the United States in armed conflict with a common enemy. Waivers to this prohibition may be granted by the Under Secretary of Defense (Acquisition) (USD(A)). Procedures for requesting such waivers are at § 205.6(a)(1).

§ 205.5 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall:

(1) Monitor compliance with this part.

(2) Develop procedures to ensure timely review of Category II and III items with the Under Secretary of Defense for Policy (USD(P)).

(3) Upon obtaining the concurrence of the USD(P), waive the restrictions in § 205.4(c)(3) when purchase of the item is in the national interest.

(4) When requested, and in coordination with the USD(P), assist the Military Departments and Defense Agencies in negotiating the elimination or